

**APPLICANTS:**  
**Marian Dodson and Harry Argentino**

**REQUEST:** A variance to allow a fence  
to exceed 4 feet in height within the front  
yard setback

**HEARING DATE:** September 26, 2005

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**

**Case No. 5511**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANTS:** Marian Dodson and Harry Argentino

**LOCATION:** 207 Darlington Road, Havre de Grace  
Tax Map: 36 / Grid: 3E / Parcel: 193  
Second (2<sup>nd</sup>) Election District

**ZONING:** AG / Agricultural

**REQUEST:** A variance, pursuant to Section 267-24B(1) of the Harford County Code  
to allow a fence to exceed 4 feet in height (6 feet proposed), within the  
front yard setback in an Agricultural District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

Marian Dodson, Co-Applicant, explained that the Applicants are seeking permission to maintain an existing 6 foot high fence along the front of their property, located on the east side of Darlington Road, MD Route 161, and to the north and west of Moxley Road. The property has about 300 feet of frontage along Darlington Road.

The Applicants' property is a 2.24 acre, agriculturally zoned parcel, improved by a single family residence and storage shed.

Ms. Dodson and Mr. Argentino purchased the subject property about two years ago. At that time a 6 foot high fence was located along Darlington Road for most of the length of the property. The property is also elevated approximately 20 feet above the road bed of Darlington Road. Furthermore, much of the property is wooded and has an irregular topography, according to Ms. Dodson. The topography of the property shown by both the aerial photographs (marked as Attachment 9 to the Staff Report), and the topography map (marked as Attachment 6 to the Staff Report). The irregular topography of the property required the residence be located in its present location which is the only flat spot on the property. The residence is located approximately 29 feet, at its closest point, to Darlington Road (see Attachment 4 to the Staff Report).

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Ms. Dodson stated that the 6 foot high fence, which was originally erected in 1972, served to help minimize the impact of noise and dust and fumes caused by traffic using Darlington Road. Soon after the Applicants moved onto the property the fence, which by that time was some 30 years old, was in such a state of decay that it needed to be replaced. The present fence erected by the Applicants exactly replaces the old fence. It was only after replacing the old fence that the Applicants were notified by the Harford County Department of Planning and Zoning that the fence, being 6 feet high and located in their front yard setback, was in violation of the Harford County Zoning Code.

Ms. Dodson believes, and asserts, that truck traffic along Darlington Road has increased considerably over the past few years. Without the fence, Ms. Dodson believes the increased traffic on Darlington Road would severely impact the subject property given the close proximity of the house to Darlington Road. The noise, dust and fumes generated by those vehicles will directly impact their home which, without the fence, has no natural buffer between it and the road. The existing fence helps greatly in mitigating that impact.

Ms. Dodson states that she and Mr. Argentino have been trying to clean-up the subject property. The Department of Planning and Zoning has also cited the Applicants for other violations, all of which pre-date their purchase of the property. These problems are being addressed and rectified to the Department's satisfaction. However, a 4 foot high fence is not high enough to be helpful, given the impact of Darlington Road and the location of the residence and the topography of the lot. Ms. Dodson believes it is essential that the fence remain at a 6 foot height.

Next for the Harford County Department of Planning and Zoning testified Dennis Sigler. Mr. Sigler stated that there have been a number of zoning issues involving the subject property, all of which pre-date the Applicants purchase. The Applicants have been working to resolve these issues to the Department's satisfaction. Many of these problems have been caused by the very unique shape of the property which lies at the intersection of Darlington Road and Moxley Road, and which has very unique and difficult topographical features. The fence itself sits approximately 20 feet above Darlington Road. There is only about 3/4 of an acre out of the entire 2.24 acre parcel that is actually useable due to topographical features and the existence of a 40 foot drainage and utility easement which runs across the northern part of the property. The house itself sits back only about 15 to 18 feet from the fence. Accordingly, without the fence, noise from and the visual impact of the extensive traffic along Darlington Road would be very intrusive.

Mr. Sigler states that the fence, since it is fairly high above Darlington Road, does not constitute a safety or sight line problem to motorists using Darlington Road. The existing vegetation and tree growth are sufficient. No additional screening is necessary. Mr. Sigler stated that during his visits the noise from the vehicles along Darlington Road was highly noticeable, and impossible to ignore. Since there is a steep grade on Darlington Road directly in front of the house, the gearing up and down of the tractor-trailers using that road is very distinctive and annoying. The Applicants' home, situated as it does, is highly impacted by this noise.

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The Department of Planning and Zoning is of the opinion that the requested variance, if granted, would have no adverse impact on any adjoining property owner. The Department recommends approval.

No testimony or evidence was given in opposition.

### **APPLICABLE LAW:**

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

- A. *Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
  - (1) *By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
  - (2) *The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

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### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

Approximately two years ago the Applicants purchased the subject property, a 2.24 acre parcel improved by a single family home. The parcel is encumbered by a 40 foot wide drainage and utility easement across the rear part of its width. However, and certainly more importantly, the property has an extremely irregular topography with only approximately 1/2 acre of a 2.24 acre surface being suitable for a building site. On that 1/2 acre, which is located immediately adjacent to Darlington Road, the home of the Applicants was originally built. Unfortunately, the home is approximately, at its closest point, located within 29 feet of the front property line and is at least 20 feet above the road bed of Darlington Road. Darlington Road at that point presents a steep grade, which causes an unusual amount of truck noise.

According to testimony of the Applicants and of Mr. Sigler, the subject property also presented a number of zoning violations, all of which pre-date the Applicants purchase and which the Applicants have been resolving to the Department's satisfaction.

The uncontradicted testimony of the Applicants is that at the time they purchased their property, a 6 foot high fence was in existence along Darlington Road, and had apparently been in existence since 1972. The need for such a fence was amply described by the Applicants testimony, as well as that of Mr. Sigler. Testimony of the Applicants further was that Darlington Road is used by tractors and trailers, and the frequency of use of the road by tractor-trailers has increased since the time the Applicants purchased their property.

It is clear by a review of the evidence, particularly including the photographs and maps in the Staff Report, and after a consideration of the Applicants' testimony, that their use of the subject property can be potentially highly impacted by the noise, dust and fumes which are generated from truck traffic on Darlington Road. The Applicants testified that traffic has increased. No doubt traffic has increased on Darlington Road as it has on most every other road within Harford County.

Furthermore, the Applicants have shown their desire to work with the Harford County Department of Planning and Zoning in attempting to rectify other zoning violations which pre-dated their purchase and occupancy of the property. Mr. Sigler confirmed the Applicants' cooperation with the Department in resolving those issues.

The evidence clearly supports a finding that the subject property is unique. Its topography is unusual; the location of the home in relationship to Darlington Road is uncommon. The amount of frontage along Darlington Road, and the heavy use by Darlington Road of commercial vehicles also tends to create a characteristic which this property shares with few if any others in the area. These factors result in a hardship to the Applicants in that they are unable to enjoy their property as do others not similarly impacted without the requested variance.

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The request by the Applicants is a relatively insignificant one. They desire to reconstruct a fence which has been there for approximately 30 years. This 6 foot high fence would be allowed anywhere else on the property except along Darlington Road, which is considered the front yard of the property. A 6 foot high fence would have no impact upon the use of Darlington Road, or on the adjoining neighbors, nor would it create a sight problem or safety hazard to motorists. At the same time the fence would help shield the Applicants from what is, no doubt, effects from traffic which are highly intrusive and adverse to their enjoyment of their property.

The proposed request is the minimum necessary to alleviate the hardship experienced by the Applicants as a result of these unique characteristics.

### **CONCLUSION:**

For the above reasons, it is recommended that the request variance be granted, subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the fence.
2. That the shed shown on the site plan shall be moved onto the subject lot and to the rear of the front yard building setback line.

Date: November 9, 2005

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on DECEMBER 12, 2005.**